

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARNICE YOUNG,

Defendant-Appellant.

UNPUBLISHED

September 29, 1998

No. 203711

Recorder's Court

LC No. 96-006608

Before: Gribbs, P.J., and Sawyer and Doctoroff, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of voluntary manslaughter, MCL 750.321; MSA 28.553. Defendant was sentenced to six to fifteen years' imprisonment, and now appeals as of right. We affirm.

Defendant's first issue is that the prosecution failed to prove beyond a reasonable doubt each element of voluntary manslaughter, and that there was insufficient evidence to find that defendant was not acting in self-defense. We disagree. This Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *Id.*

"Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation, and before a reasonable time has passed for the blood to cool and reason to resume its habitual control." *People v Fortson*, 202 Mich App 13, 19; 507 NW2d 763 (1993). Evidence was presented that the confrontation between defendant and the victim began as a verbal argument, escalated to a physical altercation, then defendant pulled out a knife and stabbed the victim to death. Viewing the evidence in the light most favorable to the prosecution, the jury could have found the essential elements of voluntary manslaughter were proven beyond a reasonable doubt.

Defendant argues, however, that when she stabbed the victim, she was acting in self-defense. To be lawful self-defense, the evidence must show that: (1) the defendant honestly and reasonably

believed that she was in danger; (2) the danger feared was death or serious bodily harm; (3) the action taken appeared at the time to be immediately necessary; and (4) the defendant was not the initial aggressor. *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993). A defendant's failure to retreat is a factor in determining whether her actions were necessary. *People v Crow*, 128 Mich App 477, 489; 340 NW2d 838 (1983). Generally, a defendant must retreat if retreat is safely possible. *People v Mroue*, 111 Mich App 759, 765; 315 NW2d 192 (1981).

Because defendant introduced evidence that she was acting in self-defense, the burden was on the prosecution of disproving it beyond a reasonable doubt. *Fortson, supra*, 202 Mich App 20. The prosecution presented evidence that defendant was the initial aggressor. Also, the prosecution presented evidence that defendant was dominating Ricky physically prior to the stabbing, which raises the inference that defendant did not honestly and reasonably believe that she was in danger of death or serious bodily harm. Finally, defendant failed to retreat, although evidence was presented that retreat was safely possible. Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for the jury to find that defendant was the initial aggressor and defendant's belief of imminent danger was either not honest or was unreasonable.

Defendant next argues that the trial court erroneously instructed the jury on defendant's fleeing the scene. We disagree. Jury instructions are reviewed by this Court in their entirety to determine if there is error requiring reversal. All of the elements of the charged offense must be included and must not exclude material issues, defenses, and theories, if there is evidence to support them. Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

To give a particular instruction to a jury, it is necessary that there be evidence to support the giving of that instruction. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988). The trial court instructed the jury on the issue of flight substantially similar to CJI2d 4.4. "It is well established in Michigan law that evidence of flight is admissible." *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Evidence of flight is probative because it may indicate consciousness of guilt, although evidence of flight by itself is insufficient to sustain a conviction. *Id.* This Court has interpreted the term "flight" to apply to such actions as fleeing the scene of the crime, leaving the jurisdiction, running from the police, resisting arrest, and attempting to escape custody. *Id.*

In defendant's statement to the police she said she left the scene immediately after the stabbing. The only witness for the defense testified that, after the stabbing, defendant left with him and he dropped her off at home. Another witness testified that after defendant stabbed the victim several times, when someone told defendant to stop, she ran. Thus, contrary to defendant's assertion, there was evidence to support the giving of the instruction regarding flight. The instructions to the jury fairly presented the issues to be tried and sufficiently protected defendant's rights.

Defendant's final issue is that the trial court abused its discretion by sentencing defendant to a disproportionately severe sentence. We disagree. Defendant's minimum sentence of six years is within the sentencing guidelines range of two to seven years and is, therefore, presumed proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). Defendant failed to allege

any unusual circumstances which would cause a sentence within the sentencing guidelines range to be disproportionate. *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992). Defendant has a prior misdemeanor domestic violence conviction, and the stabbing in this case was particularly brutal. We hold, therefore, that the trial court did not abuse its discretion in sentencing defendant to six to fifteen years' imprisonment where the minimum sentence is within the sentencing guidelines range and the sentence is proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Affirmed.

/s/ Roman S. Gibbs

/s/ David H. Sawyer

/s/ Martin M. Doctoroff